

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:

Charles Vereen,

Debtor.

Robert F. Anderson, Trustee,

Plaintiff,

v.

Charles Vereen, Charles Clark Vereen, Sonya
Ann Vereen Clark, Melanie Renee Vereen,
Russell Wilson Vereen, Hamilton Julian
Vereen, Mark Groves, Garrett Sutton, Nancy
Lake, Vereen Joint Revocable Inter Vivos
Trust, East Cambridge Limited Partnership
and Five Star Management,

Defendants.

C/A No. 96-78369-W

Adv. Pro. No. 98-80262-W

JUDGMENT

Chapter 7

Based upon the Findings of Fact and Conclusions of Law as recited in the attached Order of the Court, Mr. Sutton's request for a jury trial on the first cause of action to set aside fraudulent transfers pursuant to South Carolina Code Ann. § 27-23-10 is denied. As to the second cause of action for civil conspiracy, Mr. Sutton's request for a jury trial is granted.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,

May 24, 1999.

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L. K. ARGOE, CLERK
United States Bankruptcy Court
Columbia, South Carolina (6)

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ORDER

Chapter 7

THIS MATTER comes before the Court upon the request for a jury trial filed by the Defendant Garrett Sutton ("Mr. Sutton"). Based upon a review of the pleadings and the arguments of counsel, the Court makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

On November 4, 1998, the Trustee filed the within adversary proceeding asserting his strong arm powers pursuant to 11 U.S. C. § 544 alleging two causes of action; a fraudulent conveyance cause of action pursuant to the South Carolina Statute of Elizabeth codified at South Carolina Code Ann. § 27-23-10 and a civil conspiracy cause of action.

On February 1, 1999, Mr. Sutton filed his Answer to the Complaint requesting a jury trial. Mr. Sutton has not filed a proof of claim nor counterclaim against the estate.

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U.S. BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA, S.C.

CONCLUSIONS OF LAW

The landmark decision on the issue of entitlement to a jury trial in the Bankruptcy Court is the 1989 Supreme Court opinion, Granfinanciera, S.A. v. Nordberg, 492 U.S. 33, 109 S.Ct. 2782, 106 L.Ed 2d 26 (1989).

The Seventh Amendment provides: In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved....” We have consistently interpreted the phrase “Suits at common law” to refer to “suits in which *legal* rights were to be ascertained and determined, in contradistinction to those where equitable rights alone were recognized, and equitable remedies were administered.” Parsons v. Bedford, 3 Pet. 433, 447, 7 L.Ed. 732 (1830).

Granfinanciera, S.A. v. Nordberg, 492 U.S. 33, 109 S.Ct. 2782, 106 L.Ed 2d 26 (1989). Pursuant to the Granfinanciera, S.A. v. Nordberg analysis, the Court must begin by reviewing the individual claims that are being asserted to determine if the causes of action are legal or equitable in nature.

The first cause of action pursuant to South Carolina Code Ann. § 27-23-10 seeks to void the alleged fraudulent transfers. Paragraph 39 of the Complaints states “[t]he Plaintiff is informed and believes that the aforescribed conveyances by the Debtor were fraudulent conveyances made in violation of Section 27-23-10 of the Code of Laws of South Carolina (1976), and, as such, should be declared null and void and of no effect whatsoever.” The parties are in agreement that because the relief sought by the Trustee is to set aside the alleged fraudulent conveyances, the action sounds in equity and therefore Mr. Sutton is not entitled to a jury trial on the first cause of action. See Future Group, II v. NationsBank, 324 S.C. 89, 478 S.E.2d 45 (1996) and South Carolina Nat. Bank v. Halter, 293 S.C. 121, 359 S.E.2d 74 (Ct. App.

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1987).

The second cause of action is a civil conspiracy cause of action arising pursuant to state law.

Conspiracy is the conspiring or combining together to do an unlawful act to the detriment of another or the doing of a lawful act in an unlawful way to the detriment of another. Charles v. Texas Company, 192 S.C. 82, 5 S.E.2d 464 (1939); Sams v. Brotherhood of Railway and Steamship Clerks, Sumter Lodge No. 6193, 166 F.Supp. 49 (E.D.S.C.), affirmed, 233 F.2d 263 (4th Cir. 1956). There is recognized in the law of conspiracy a clear distinction between criminal and civil cases.

Todd v. S.C. Farm Bureau Mut. Ins. Co., 276 S.C. 284, 278 S.E.2d 607 (1981). The entitlement to a jury trial on a civil conspiracy cause of action is dependent upon the relief sought.

An action for civil conspiracy is normally an action at law. Future Group, II v. NationsBank, 324 S.C. 89, 478 S.E.2d 45 (1996). However, the character of an action as legal or equitable depends on the relief sought. When equitable relief is sought in an action in tort the action is one in equity. Culler v. Blue Ridge Elec. Coop., Inc., 309 S.C. 243, 422 S.E.2d 91 (1992); Perry v. Heirs at Law and Distributees of Gadsden, 313 S.C. 296, 437 S.E.2d 174 (Ct.App.1993), aff'd as modified, 316 S.C. 224, 449 S.E.2d 250 (1994).

First Union Nat. Bank v. Soden, 333 S.C. 554, 511 S.E.2d 372 (Ct. App. 1998).

Paragraph 43 of the Trustee's Complaint states that "Plaintiff is entitled to an award of damages, including punitive damages resulting from the conspiracy." Unlike the fraudulent conveyance cause of action in which the Trustee seeks to void the transfers and return the property to the estate, in the civil conspiracy cause of action against Mr. Sutton, the Trustee is seeking a monetary judgment, not equitable relief, and therefore Mr. Sutton is entitled to a jury trial.

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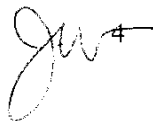
For all of these reasons, it is the finding of the Court that Mr. Sutton is not entitled to a jury trial on the first cause of action to set aside fraudulent transfers pursuant to South Carolina Code Ann. § 27-23-10. As to the second cause of action for civil conspiracy, it appears that Mr. Sutton is entitled to a jury trial. "Where legal and equitable claims are brought in one case, however, a party retains the right to a jury trial on the legal claims even where the legal issues are characterized as incidental to the equitable." Dairy Queen, Inc. v. Wood, 369 U.S. 469, 82 S.Ct. 894 (1962).

Unless otherwise ordered, this Court will retain this adversary proceeding and determine pretrial issues on all causes of action up to the point of and including a final pretrial conference, preserving the right to jury trial for the entitled Defendants as stated herein and preserving the parties' mutual right to have any jury trial conducted in the United States District Court for the District of South Carolina pursuant to Local Rule 9015-1. At that time, by further order the Court shall address the trial of these matters.

AND IT IS SO ORDERED.

Columbia, South Carolina,
May 24, 1999.


UNITED STATES BANKRUPTCY JUDGE



CERTIFICATE OF MAILING
The undersigned deputy clerk of the United States
Bankruptcy Court for the District of South Carolina hereby certifies
that a copy of the document on which this stamp appears
was mailed on the date listed below to:

MAY 24 1999

DEBTOR, DEBTOR'S ATTORNEY, TRUSTEE

JUDY G. SMITH

Deputy Clerk

W/ judgment

*Manos
Richards
Haselden*

Houser

Allen

MacDonald

Hawkins

Zuckerman

Index 99-92